

REMARKS

Claims 1 to 7, 10 to 12, 15, 17, 20-22, and 24 are in the application. Claims 8, 9, 13, 14, 16, 18, 19, 23, 25 and 26 have been cancelled. Claims 1, 2, 11 and 12 have been amended. Support for the amendments can be found in the specification on page 4, lines 27 to 32 and page 5, lines 1 to 3. Applicants reserve their right to file continuation or divisional applications on all cancelled or deleted subject matter.

The Examiner has held that Claims 13 to 26 have been provisionally withdrawn from consideration as non-elected subject matter. Applicants do not understand why claims 15 to 19 and their respective pharmaceutical composition claims have been held withdrawn. The subject matter of these claims were wholly contained within examined claim 6 and merely broken into four species claims as claims 6, and 15 to 19. Consequently, these claims and their respective additional composition claims should be examined together.

Obvious Double Patenting Rejection

Claims 1 to 5 and 7 to 11 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over Claims 1 to 13, 15, 16, and 18-22 of Applicants co-pending application USSN 10/587,790. Applicants respectfully traverse this rejection.

The Examiner comments that this rejection is being maintained as the pending claims are not allowable. This statement makes no sense relative to this rejection. Applicants instant application is the senior to Applicants copending application 10/587,790 (corresponding to that of WO 2005/073217). The USSN 10/587,790 application has a priority date of 30 January 2004. The present application has a priority date of 31 July 2002.

Without wishing to quote the entire MPEP sections regarding obvious type double patenting, specifically section 804, the Manual is quite clear as to the process which should occur. In this instance the earlier-filed application (the instant one) should be permitted to issue as a patent without a terminal disclaimer. The later-filed application will be handled accordingly upon examination.

Consequently it is irrelevant to this rejection whether or not the claims in the instant case are "allowable" or not as the rejection is improper on its face. Withdrawal of the obviousness-type double patenting is requested.

Rejection under 35 USC §103

Claims 1 to 3, 5 and 7 to 11 are rejected under 35 USC §103(a) as being unpatentable over WO 2003/097610, Martina et al. Applicants respectfully traverse this rejection.

The Examiner comments that “[T]he ‘610 publication discloses several compounds which would anticipate Applicant’s Markush language of Claim 1, with the exception that Applicant’s instant genus must contain a methyl or chloro at the R1 position.” See Page 5, lines 6 to 8 (Office Action).

The Pharmacia application discloses substituted indazole derivatives. Applicants A ring has been amended to further prosecution on the merits to several of the specifically identified rings in the specification, such as an isoxazolyl, pyrrolyl and thiazolyl rings. While the ring can be also be a pyrazolyl ring, this subject matter will be in a continuation application to be filed shortly.

The Pharmacia application does not teach nor suggest the fused isoxazolyl, pyrrolyl or thiazolyl rings as claimed herein. The Pharmacia application does not teach these specific rings also containing the required phenyl ring, attached in the 4-position of the fused bicyclo ring.

In view of these amendments and remarks, withdrawal of the rejection to the claims under 35 USC 103 is respectfully requested.

Rejection under 35 USC §112

Claims 8 and 9 are rejected under 35 USC §112, first paragraph as being non enabling for treating “any condition or disease state mediated by p38 kinase activity in a patient” or “for treating any condition or disease stated mediated by cytokines produced by the activity of p38 kinase in a patient.” Applicants respectfully traverse this rejection.

While Applicants do not agree with the Examiner that the specification is nonenabling for treatment of cytokine mediated diseases in order to further prosecution on the merits, the claims have been cancelled and will be filed in a continuation application for further prosecution.

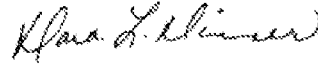
Claims 6 and 12 were noted as being allowable but for the dependence on a rejected base claim. As it is believed that any rejections to the base claims have been overcome, all the claims in the application are believed to be in condition for allowance.

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Should the Examiner have any questions or wish to discuss any aspect of this case, the Examiner is encouraged to call the undersigned at the number below. If any additional fees or charges are required by this paper the Commissioner is hereby authorized to charge Deposit account 19-2570 accordingly.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Dara L. Dinner".

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